

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

LENVEL A. SPENCER, JR.,

Petitioner,

v.

CIVIL ACTION NO. 2:04-cv-1027

JAMES IELAPI, Warden,

Respondent.

MEMORANDUM OPINION AND ORDER


On September 20, 2004, the petitioner, who is incarcerated at the Pruntytown Correctional Center in Pruntytown, West Virginia, filed a Petition for a Writ of Habeas Corpus [Docket 2] filed pursuant to 28 U.S.C. § 2254. Now pending before the court is the respondent's motion to dismiss the petition as untimely [Docket 7]. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court dismiss the petition because the case is barred by the one-year statute of limitations. Neither party has filed objections to the Magistrate Judge's findings and recommendation.

The failure to object to a magistrate judge's report may be deemed a waiver on appeal of the substance of the report and the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983); *Campbell v. United States D. Ct. N.D. Cal.*, 501 F.2d 196, 206 (9th Cir. 1974). The court has reviewed the Magistrate Judge's findings of fact and recommendations and finds no clear

error on the face of the record. Therefore, the court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and orders judgment consistent with the findings and recommendations. The court **GRANTS** the respondent's motion to dismiss the petition as untimely [Docket 7], **DISMISSES** this action from the docket, and **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

The court **DIRECTS** the Clerk to send a copy of this written opinion and Order to counsel of record and any unrepresented party.

ENTER: August 1, 2005



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE